

New Framework on Regional Financial Regulation in the Caribbean

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FEATURED PERSPECTIVES

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On July 5, 2009, the heads of government of the Caribbean Community (CARICOM) at its 30th meeting in Liliendaal, Guyana, issued a declaration affirming their commitment to the principles and goals of CARICOM, as set forth in the revised Treaty of Chaguaramas establishing CARICOM, including the CARICOM Single Market and Economy (CSME).¹

In the declaration's prelude, the heads of government cited the need to respond to the global financial and economic crisis by making appropriate reforms in their financial-sector policy and regional financial architecture.

The declaration acknowledges that strengthening national regulatory and supervisory systems is critical to ensuring safety, soundness, and stability in the financial sector.

Considering the extent of financial integration in the Caribbean region as a result of both organic growth and mergers and acquisitions, the declaration calls for the enhancement of intraindustry cross-border supervision by the regional regulatory organizations, such as the Committee of Central Bank Governors, the Carib-

bean Association of Insurance Regulators,² the Caribbean Group of Securities Regulators,³ and the CARICOM Competition Commission.⁴

In recognition of the relatively high degree of financial integration requiring regional solutions to financial problems and the need for closer collaboration among the supervisory authorities in Caribbean jurisdictions where information can be shared regularly to address cross-border financial issues, the heads of government established a College of Regulators.

The declaration observes that continued improvement in standards for disclosure, transparency, and corporate governance for both public and private companies is required for effective surveillance, regulation, and supervision. Regarding the sensitive and cross-cutting nature of financial transactions, data and information must be generated in a regular and timely way.

Early warning systems, stress testing, and the publication of financial soundness indicators are critical for monitoring at the national and regional levels to improve detection and assessment of threats to regional

¹For the press release, see http://www.cnm.org/index.php?option=com_content&view=article&catid=58%3Apress_releases&id=423%3Adraft_caricom_secretariat_communique_issued_at_the_conclusion_of_the_30th_meeting_of_the_caricom_heads_of_government_2_5_july_2009_georgetown_guyana&Itemid=127&0872a8d70c6252b77261d45b4779477d=4a1b4c89310a7e705ca0b570ed834d8c.

²For more information, see <http://www.cair.org.tt>.

³The Caribbean Group of Securities Regulators is an informal group of securities regulators that seeks to strengthen the regulatory framework for securities business within the Caribbean through greater coordination and standardization of institutional structures and processes.

⁴For more information, see http://www.caricom.org/jsp/community/competition_commission.jsp.

financial stability. In this regard, the heads of government wholeheartedly support the initiatives of the regional central banks through the Caribbean Center for Money and Finance and the Caribbean Group of Banking Supervisors,⁵ as well as the Caribbean Association of Insurance Regulators and the Caribbean Group of Securities Regulators.

The declaration notes the region's particular vulnerability to exogenous shocks. The heads of government state their commitment to strengthening the capacity of existing regional agencies and mechanisms (such as the Caribbean Development Bank, Petroleum Fund, and CARICOM Development Fund) to perform both a developmental and stabilization role. The heads of government will seek support and financing for the regional institutions from the international financial institutions and the multilateral development banks.

The declaration observes that the international financial centers in the Caribbean and elsewhere have recently encountered intense pressure. In this regard, CARICOM continues to strengthen transparency and enhance regulation of its international financial sector. Also, CARICOM calls for the same treatment as that granted to the developed countries and other preferential jurisdictions.

The declaration points to the central role of the Council for Finance and Planning⁶ in ensuring coherence, coordination, and harmonization in the development and integration of the regional financial system and in reporting on regulatory gaps and deficits. The declaration looks forward to the finalization of the CARICOM Financial Services Agreement (CFSA).

The declaration cites the need to commit CARICOM governments to a vigorous and intensive review of the operation of the regulatory and supervisory system.

Analysis

The challenge is that the obstacles to the Caribbean regional financial system come at a time when the region is trying to establish much of its financial architecture, especially in a way that reduces disparities with the rest of the world, to reduce intra-CARICOM disparities, and to achieve policy convergence for eventual monetary union.⁷

⁵For more information, see <http://www.cgbsnet.org>.

⁶For more information, see http://www.caricom.org/jsp/community_organs/cofap.jsp?null&prnf=1.

⁷See, e.g., CARICOM Secretariat, Caribbean Trade and Investment Report 2005 Corporate Integration and Cross Border Development 351, 351-376 (CARICOM Secretariat 2006) (discussing economic convergence and development).

To a large extent CARICOM is trying to emulate the recommendations and actions of the G-20, such as the decision to establish a College of Regulations.⁸

The region has been hit particularly hard by the global financial and economic crisis, including the failures and crises of CL Financial, British American Insurance, and Stanford Financial Group. The latter case became even more contentious and controversial for CARICOM when seven investors brought a class action suit against the government of Antigua and Barbuda, charging it with racketeering and fraud.⁹

The global financial crisis has given rise to a push to harmonize the Caribbean capital market, due to both the rise in mergers and acquisitions and the need for a harmonized regional capital market to successfully implement the CSME. On November 10 and 11, 2008, during a meeting of the Caribbean Group of Securities Regulators, Sir Neville Nichols, its chair, called for a credible regulatory regime in the region. Nichols called for securities regulators to obtain the authority and resources to ensure that all market participants play by the same rules, for the regulators to be given the flexibility to interact between the changing marketplace and evolving legal and regulatory frameworks, and for them to have legal support for the exchange of information.¹⁰

CARICOM is also moving to facilitate trade and investment in regional services, including financial services. On April 27, 2009, CARICOM officials met in Port of Spain, Trinidad and Tobago, to review the final draft of the CFSA. In creating the CSME, the CFSA is expected to play a critical role by assisting in the formation of a harmonized financial services market in which all economic actors will be expected to abide by similar rules, standards, and conditions across the community. CFSA is expected to complement the removal of restrictions on the movement of people, services, and capital, which is also required to fully establish the region's single economic space.¹¹

⁸For additional background, see GINA News, "New CARICOM Framework for Financial Regulation and Supervision Issued," available at http://news.caribseek.com/Guyana/article_79457.shtml.

⁹*John Gale Frank v. Commonwealth of Antigua & Barbuda*, U.S. District Court, S.D. Tex., Houston Div.; for background, see Sheila McNulty and Stacy-Marie Ishmael, "Antigua Sued by Stanford 'Victims,'" *Financial Times*, July 14, 2009.

¹⁰Remarks of the chairman, Securities Commission of Barbados, Caribbean Group of Securities Regulators' Conference, Nov. 10-11, 2008, Barbados, available at <http://www.cartac.com.bb/UserFiles/File/CGSR%20Annual%20Conference/Welcomes%20Remarks%20-%20Sir%20Neville%20Nicholls.pdf>.

¹¹Officials to Review the CARICOM Financial Services Agreement, Press Release 19/2009, available at http://www.crn.com/index.php?option=com_content&view=article&id

(Footnote continued on next page.)

Clearly, the CARICOM heads of government and individual CARICOM governments are responding to the shocks created by the financial crisis. For instance, the financial losses of CL Financial and CLICO have been an enormous problem in almost all of the CARICOM countries.¹² On June 19, 2009, the indictment of Texas billionaire R. Allen Stanford caused ripples in Antigua and Barbuda, which dismissed the country's chief financial regulator, Leroy King, over his alleged role in the Stanford fraud case. King had already been suspended the previous week as head of Antigua's Financial Services Regulatory Commission over charges that he collaborated in the fraud. On July 14, investors brought a class action complaint against the government of Antigua and Barbuda, alleging that the government "became a full partner in [the] fraud" and charging RICO violations.¹³

The CARICOM declaration on regional financial regulation and supervision illustrates an initiative to harmonize the financial regulatory regime while strengthening parliamentary oversight and cooperation with international financial regulatory regimes.¹⁴ To achieve success, the emerging CARICOM financial regulatory regime will need, as must the counterpart international regulatory regime, to build transparency, the participation of nongovernmental actors, and the proactive generation of knowledge and accountability

of outcomes. The cooperation must also lead to regulatory competition that is especially beneficial for consumers.¹⁵

Recent studies have raised the question whether, given the degree of market power and return on assets, the Caribbean financial services industry would have been considered sufficiently competitive in the 1990s. However, the CSME is designed to overcome the constraints of small market size and market distortions as factors modifying and overcoming that assessment.¹⁶ The economic partnership agreement between the Caribbean Forum (CARIFORA) and the European Community is also designed to provide new opportunities that will facilitate the competitiveness of Caribbean financial services.¹⁷ The future of CARICOM regional financial regulation and supervision will depend partly on whether CARICOM can achieve additional trade in financial services with other countries or groups, particularly its traditional trading partners (such as Canada and the United States), as well as nontraditional trading partners (such as Brazil, India, and China). Within those developments CARICOM jurisdictions such as the Bahamas, which has until now not participated actively either in CARICOM or CARICOM's agreements with other countries, and individual firms, such as regional firms like RBTT and Sagicor, as well as extraregional ones, will be repositioning themselves. ◆

=404:officials-to-review-the-caricom-financial-services-agreement&catid=58:press-releases&Itemid=127.

¹²"CCMF Online: The Pulse of the Caribbean Economy," 2 *Caribbean Centre for Money & Finance Newsletter* 1, 1-2 (No. 7, July 2009).

¹³McNulty and Ishmael, *supra* note 9.

¹⁴For useful discussion of the theory behind such regulatory efforts from a macro perspective, see John Braithwaite, "Prospects for Win-Win International Rapprochement of Regulation," *Regulatory Co-Operation for an Interdependent World* 201, 201-224 (OECD 1994).

¹⁵Braithwaite, "Lessons for Regulatory Co-Operation," *Regulatory Co-Operation for an Interdependent World* 225, 225-231 (OECD 1994).

¹⁶CARICOM Secretariat, *supra* note 7, at 474.

¹⁷For more information, see Bruce Zagaris and Elena Papangelopoulou, "An Overview of the CARIFORUM-EC Economic Partnership Agreement," *Tax Notes Int'l*, Feb. 25, 2008, p. 689, *Doc 2008-1478*, or *2009 WTD 40-11*; and Zagaris and Papangelopoulou, "The Economic Partnership Agreement Between the European Community and Cariforum: An Assessment," *Latin American Law and Business Report* 9 (Feb. 28, 2008).